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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,481	07/16/2003	Max Harry Well	03/118	9073

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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 10/620,481	Applicant(s) WELL ET AL.	
	Examiner Danton DeMille	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-45 is/are pending in the application.
- 4a) Of the above claim(s) 41-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. **Claims 33, 34, 37, 38, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arpin in view of Nowakowski.**
2. Arpin teaches an energizable actuator 37 and a torso wrap 39. The actuator including a stationary frame 38, a reciprocating member 36 and means 2, 8 for cycling said reciprocating member relative to the frame. The reciprocating member is a cylinder and at least one piston part 42 slidable downward.
3. Nowakowski teaches in figures 5, 7 and 8 that the reciprocating member includes at least two piston parts that telescopically slide relative to one another. Piston part 48 telescopes within member 4 and piston part 61 slides within piston part 48. It would have been obvious to one of ordinary skill in the art to modify Arpin to provide to include a second telescoping piston part as taught by Nowakowski in order to bias the pressing member so that the reciprocating member can yield to an expanding chest.
4. Regarding claim 39, the relative size dimensions of the piston parts are well within the realm of the artisan of ordinary skill and is not critical to the operation of the device. Nowakowski teaches the second piston part 61 has a diameter that is at least half of the diameter of the first piston part 48.
5. **Claim 35 rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 33 above, and further in view of Kelly et al. 5,738,637.**
6. Regarding claim 35, Kelly teaches column 12, lines 9-30, "to ensure that the patient's lungs are allowed to expand as much as desired, it may be necessary to include a full-release

indicator with the present invention." "This indicator may include a limit switch, a magnet reed relay or contacts on the base 14 against which the arm assemblies 16 and 18 rest in their relaxed position." Furthermore, Kelly teaches "a mechanism could be added to the arm assemblies 16 and 18 for preventing the application of force to the handles 30 and 32 until full release (and return to the relaxed position) has occurred." Clearly Kelly teaches the importance of providing a means for sensing recovery of the patient's chest and making sure the cycle does not begin again until a full release position has occurred.

7. Kelly also teaches a control system to convert manual actuation to a computerized power unit there appears to be no unobviousness to use this limit switch sensor to sense the recovery of the patient's chest as part of the automated system to ensure a full release position has occurred so that the means for cycling begins to again move to depress the patient's chest. It would have been obvious to one of ordinary skill in the art to further modify Arpin to include the means for sensing recovery of the patient's chest as taught by Kelly in the automated system to control the means for cycling to control the instant at which the cycling begins as taught by Kelly.

8. **Claim 33, 34, 37, 38, 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Hewson in view of Nowakowski.**

9. Hewson teaches an energizable actuator 12 coupled to the patient's chest using a wrap 16 including a stationary frame. Hewson teaches the actuator 12 is a piston and cylinder unit. The details of which are unknown. Nowakowski teaches a piston and cylinder arrangement where the pressure member is biased within an outer piston part. It would have been obvious to one of ordinary skill in the art to modify Hewson to use a telescoping piston arrangement as taught by

Nowakowski in order to bias the pressing member so that the reciprocating member can yield to an expanding chest.

10. Claim 35 rejected under 35 U.S.C. 103(a) as being unpatentable over Hewson 3,509,899 in view of Nowakowski as applied to claim 33 above, and further in view of Kelly et al. 5,738,637.

11. It would have been obvious to one of ordinary skill in the art to further modify Hewson to include the means for sensing recovery of the patient's chest as taught by Kelly in the automated system to control the means for cycling to control the instant at which the cycling begins as taught by Kelly.

12. Claim 36, 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 33 above and further in view of McClain et al.

13. The pressing member of McClain is pivotally attached at 60 to allow for different shapes of people and to assure the pressing member is always making complete and uniform contact with the patient. It would have been obvious to one of ordinary skill in the art to further modify either Arpin or Hewson to include a pivot connection between the piston and the pressing member as taught by McClain to assure the pressing member is always making complete and uniform contact with the patient.

Election/Restrictions

14. Newly submitted claims 41-45 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these claims are drawn to a method of applying pressure pulses wherein the actuator applies downward forces between 10-30% of the cycle and allowing the chest to recover during 70% of the time. Claims 33-40 are

drawn to an apparatus for applying compressions to the chest using plural reciprocating piston parts. These subcombinations are distinct from each other because they are separately usable.

The method claims have separate utility for applying compressions to the chest of the patient in a particular manner that doesn't require the details of the apparatus claims. See MPEP § 806.05(d).

15. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 41-45 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

16. Applicant's arguments filed 25 October 2004 have been fully considered but they are not persuasive.

17. It is immaterial that Nowakowski teaches a ventilation piston 40 that compresses air in a ventilation chamber 80 etc. Nowakowski is cited to teach the advantage of having a secondary piston within an outer piston for biasing the pressing member against the chest compensating for movements of the chest such as breathing. Nowakowski teaches a secondary inner piston part 61 within a first piston part 48. Arpin and Hewson already teach the mechanics of applying a force against the chest of the patient using a hydraulic piston. Providing a secondary piston part within a conventional first piston part as taught by Nowakowski would have been an obvious provision to compensate for an expanding chest. The details of how the Nowakowski piston operates is not material to this rejection. Both Arpin and Hewson already teaches these details.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

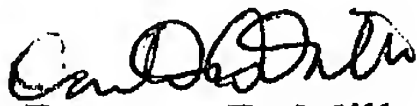
20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Danton DeMille
Primary Examiner
Art Unit 3764